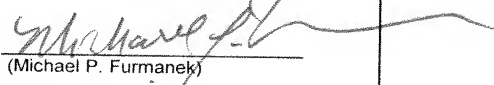


I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: October 15, 2008

Signature: 

(Michael P. Furmanek)

Docket No.: 30071/40493  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Rauscher Guenther

Application No.: 10/511,819

Confirmation No.: 6563

Filed: April 28, 2005

Art Unit: 3651

For: CONVEYOR LINE WITH AN ADJUSTABLE  
RAILING AND AN ACTUATOR DRIVE

Examiner: K. Singh

**APPEAL BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

As required under 37 C.F.R. § 41.37(a), this brief is filed within two months of the date of receipt of the Notice of Appeal in this case, August 20, 2008. The fee for submitting this Appeal Brief has been paid by credit card. In the event that any additional fees are necessary, kindly charge the cost thereof to Deposit Account No. 13-2855, Order No. 30071/40493.

## TABLE OF CONTENTS

Identification Page.....	1
Table of Contents.....	2
I. Real Party In Interest.....	3
II. Related Appeals and Interferences.....	4
III. Status of Claims.....	5
IV. Status of Amendments.....	6
V. Summary of Claimed Subject Matter.....	7
VI. Grounds of Rejection to be Reviewed on Appeal.....	8
VII. Argument.....	9
A.    REJECTIONS UNDER 35 U.S.C. § 102(B) OVER AIDLIN ARE IMPROPER.....	9
B.    REJECTIONS UNDER 35 U.S.C. § 103(A) OVER AIDLIN IN VIEW OF LEONARD OR OUELLETTE ARE IMPROPER .....	12
C.    CONCLUSION.....	12

## APPENDICES

Claims Appendix.....	13
Evidence Appendix.....	22
Related Proceedings Appendix.....	23

**I. REAL PARTY IN INTEREST**

The real party in interest for this appeal is the assignee, KRONES AG, a corporate entity, with its mailing address at Böhmerwaldstraße 5, 93073 Neutraubling, Germany. The assignment to KRONES AG is recorded at Reel/Frame 015919/0180.

**II. RELATED APPEALS AND INTERFERENCES**

None.

### **III. STATUS OF CLAIMS**

Claims 1-23 and 25-54 are pending. Claims 1-23 and 25-54 are rejected and appealed.

**IV. STATUS OF AMENDMENTS**

No amendments were filed subsequent to the final rejection mailed February 20, 2008.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

**Independent claim 1** is directed to a conveyor line (1) for products (16) such as bottles, cans or similar containers, which comprises at least one guide railing (6) which is adjustable across a direction of conveyance and is operable by at least one actuator drive (2). *See*, page 4, lines 15-24; page 5, lines 4-13; and Fig. 1. The conveyor line (1) also comprises a plurality of movable stops (8a, 8b, 8c) that are optionally placeable at several preset positions (7, 7', 7'') in one or more adjustment pathways (S) of the guide railing (6) to delimit the at least one guide railing (6) and define various railing positions. *See*, page 5, lines 19-22; page 6, lines 8-23; and Fig. 2b.

**Independent claim 25** is directed to an actuator drive (2) for actuating and positioning adjustable guide railings (6) on conveyor lines for products (16) such as bottles, cans or similar containers which comprises a stop body (A) defining one or more adjustment paths (S) for the guide railings (6), and a plurality of preset positions (7, 7', 7''). *See*, page 4, lines 15-24; page 5, lines 4-13; and Fig. 1. The actuator drive also comprises a plurality of movable stops (8a, 8b, 8c) which can be arranged in the preset positions (7, 7', 7'') and can be moved into the one or more adjustment paths (S) of the actuator drive (2) to delineate the one or more adjustment paths (S). *See*, page 5, lines 19-22; page 6, lines 8-23; and Fig. 2b.

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

- A. Are claims 1-9, 11-16, 18-22, 25-30, 32, 33, 35-40, 42-44, 46, 48, and 50-53 anticipated by Aidlin (U.S. Patent No. 5,542,789)?
- B. Are claims 10, 17, 31, 34, 41, 45, 47, 49, and 54 obvious over Aidlin in view of Leonard (U.S. Patent No. 6,305,528) or Ouellette (U.S. Patent No. 6,318,935)?

## VII. ARGUMENT

The rejections of claims 1-23 and 25-54 set forth in the final Office Action mailed February 20, 2008 are improper and should be reversed because the examiner has failed to establish prima facie cases of anticipation and obviousness. Specifically, a prima facie case of anticipation has not been established because the cited reference fails to disclose each and every limitation recited in the claims at issue. Additionally, a prima facie case of obviousness has not been established because the cited references fail to disclose or suggest, neither individually nor in combination, every limitation recited in the claims at issue.

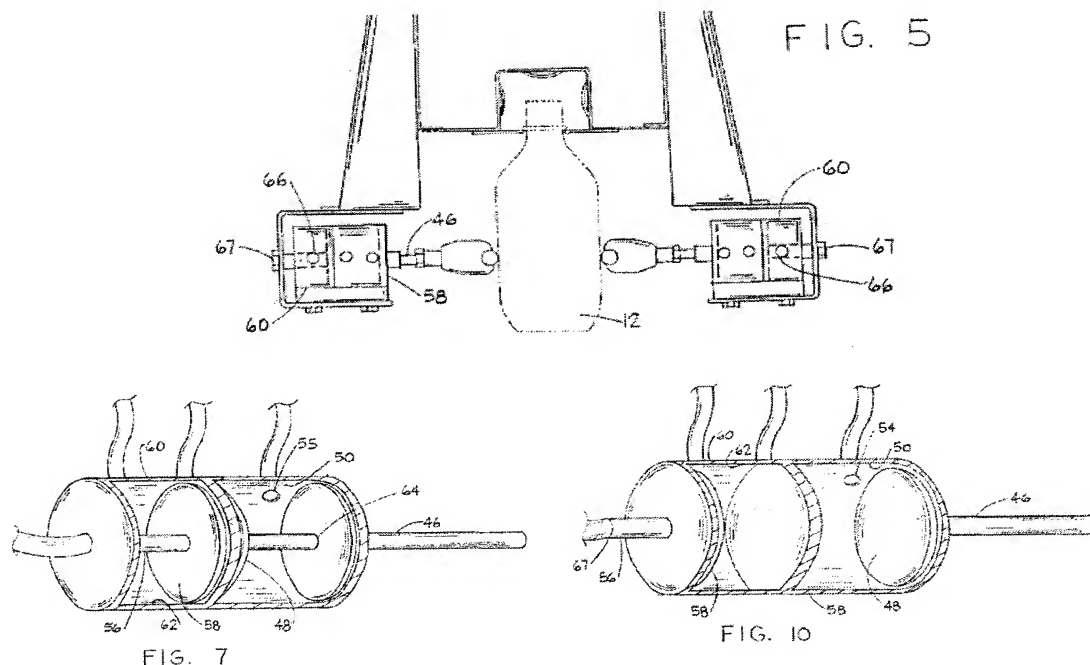
### A. REJECTIONS UNDER 35 U.S.C. § 102(B) OVER AIDLIN ARE IMPROPER

Claims 1-9, 11-16, 18-22, 25-30, 32, 33, 35-40, 42-44, 46, 48, and 50-53 stand rejected under 35 U.S.C. §102(b) as anticipated by Aidlin et al. (U.S. Patent No. 5,542,789).

It is well-established that each and every limitation of a claimed invention must be present in a single prior art reference in order for anticipation to occur. *See*, for example, *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1349 (Fed. Cir. 1998). The standard for anticipation is one of strict identity. This standard is not satisfied with respect to the aforementioned claims of the present application because neither Aidlin nor any other art of record discloses or suggests movable stops that are placeable at several preset positions to delimit a guide railing, as recited in independent claims 1 and 25.

Instead, Aidlin discloses a bottle guide assembly comprising a guide rail positioning device that includes first and second “blocks” 58, 60. *See* Aidlin, col. 5, lines 6-41; and Figs. 5 and 7-10 (Figs. 5, 7 and 10 are provided below for reference). These blocks 58, 60 are coupled in an end-to-end relationship and together define two coaxial cylinders having fixed opposing end walls and a fixed center wall. *See* Aidlin, col. 5, lines 34-35; and Figs. 5 and 7-10. A first piston 48 having a first rod 46 is axially displaceable within the bore 50 of the first block 58, and a guide rail 42 is secured to the end of the first rod 46. *See* Aidlin, col. 5, lines 6-17; and Figs. 5 and 7-10. When compressed air is pumped into the first block 58 via one of two ports 54, 55, the first piston 48 is displaced either towards or away from a column of bottles 12 conveyed in a direction parallel to the longitudinal axis of the guide rail 42. *See* Aidlin, col. 5, lines 21-30; and Figs. 1, 2 and 7-10. A second piston 59

(note: second piston 59 is mislabeled as 58 in Figs. 7-10) is located within the bore 62 of the second block 60, and the rod 56 of the second piston 59 is fixed in position. *See Aidlin*, col. 5, lines 31-38. When compressed air is pumped into one of two ports 66, 67, the second block 60 (and thus the first block 58 and the attached guide rail 42) are displaced towards or away from the bottles 12 being conveyed. *See Aidlin*, col. 5, lines 42-54. By selectively pumping compressed air into one or more ports located on the first and second blocks 58, 60, the guide rail 42 can be moved to contact bottles 12 having a wide variety of sizes and shapes, thereby limiting the lateral movement of bottles 12 as they are conveyed. *See Aidlin*, col. 4, lines 60-65; col. 5, line 59-col. 6, line 17; and Figs. 2-6.



The mechanism of Aidlin does not disclose “stops” that establish *preset positions* that delimit the guide railing, as recited in claims 1 and 25. Instead, the blocks of Aidlin provide for the “automatic repositioning of the side rails as a function of the size of the bottles being fed.” *See Aidlin*, col. 1, lines 56-64. Specifically, the pistons within the blocks of Aidlin can extend or retract *until the guide railing 42 contacts the side of the bottles 12* being conveyed. *See Aidlin*, col. 4, lines 60-65; col. 5, line 59-col. 6, line 17; and Figs. 1-6. Therefore, it is the *bottles themselves*, not one of a plurality of stops that has been placed at a preset position, *that delimit the guide railing*.

In the final Office Action, the examiner asserts that elements 54, 55, and 60 of Aidlin constitute “stops.” *See* page 2, “Response to Arguments;” and page 3, lines 3-7. Appellant respectfully submits, however, that the examiner has misconstrued the teachings of Aidlin. Elements 54 and 55 of Aidlin identify “ports” in the block for communicating with a pneumatic line, as described above. *See* Aidlin, col. 5, lines 21-30; and Figs. 2 and 7-10. One of ordinary skill in the art would not understand the ports to constitute “stops” as recited in the claims of the present application because the ports 54, 55 do not delimit the guide rails.

Furthermore, reference numeral 60 is one of the first and second “blocks” that constitute a pneumatic cylinder. *See* Aidlin, col. 5, lines 32-53. When compressed air is pumped in one of the ports 66, 67, the second block 60 moves relative to the fixed second piston 59 to allow the first block 58 and guide rail 42 to contact the conveyed bottles 12. *See* Aidlin, col. 5, lines 32-53. The second block 60, therefore, does not act as a “stop” because the block 60 does not delimit the position of the guide railing and cannot be arranged in preset positions, as recited in claims 1 and 25. While the end walls and center wall of the block assembly 60, 58 can limit the movement of the pistons 48, 59, motion is only restricted at the extreme physical boundaries of the pistons’ stroke due to the finite physical length of the bores 50, 62 of the blocks 58, 60. *See* Aidlin, Figs. 7-10. Thus, the restriction of the pistons’ displacement caused by the walls of the blocks *prevents* the guide rail 42 from extending further and contacting the conveyed bottles 12, rather than acting as a preset stop to delimit the guide rail 42.

The examiner also misconstrues the teachings of Aidlin when he asserts that the “stops (54,55,60) move back and forth to hand the bottles,” and that “through port 54, the piston moves away from the rail to port 55, a preset position.” *See* page 2, “Response to Arguments.” As explained above, the ports 54, 55 are formed on the first block 58 and allow compressed air into the bore of the block 58, and thus do not “hand the bottles.” *See* Aidlin, col. 5, lines 21-30. Additionally, the first piston 48 (which is located in the first block 58 having the indicated ports 54, 55) is coupled to the guide rail 42, and thus can’t move “away from the rail.” *See* Aidlin, col. 4, line 54-col. 5, line 12; and Fig. 2. Rather, as explained above, compressed air pumped into one of the ports 54, 55 of the first block 58 causes the first piston 48 and the guide rail 42 coupled thereto to either extend towards and contact the

bottles 12 being conveyed or retract away from the bottles 12 being conveyed. *See* Aidlin, col. 5, lines 21-30.

Consequently, Appellant respectfully requests the Board to reverse the anticipation rejections of claims 1-9, 11-16, 18-22, 25-30, 32, 33, 35-40, 42-44, 46, 48, and 50-53.

B. REJECTIONS UNDER 35 U.S.C. § 103(A) OVER AIDLIN IN VIEW OF  
LEONARD OR OUELLETTE ARE IMPROPER

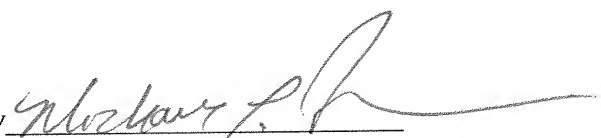
Claims 10, 17, 31, 34, 41, 45, 47, 48, 53, and 54 stand rejected under 35 U.S.C. § 103(a) as obvious over Aidlin in view of Leonard (U.S. Patent No. 6,305,528), and claims 31, 45, and 54 stand rejected as obvious over Aidlin in view of Ouellette (U.S. Patent No. 6,318,935). Claims 10, 17, 45, 47, 49, and 54 depend on claim 1, and claims 31, 34, and 41 depend on claim 25. Because Aidlin, alone or in combination with Leonard and Ouellette, does not disclose or suggest all of the limitations of claims 1 or 25, a prima facie case of obviousness has not been established. *See In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Consequently, Appellant respectfully requests the Board to reverse the rejections of claims 10, 17, 31, 34, 41, 45, 47, 49, and 54.

C. CONCLUSION

In light of the foregoing remarks, Appellant respectfully submits that each of the pending claims are in condition for allowance, and kindly requests the Board to reverse the outstanding rejections.

Dated: October 15, 2008

Respectfully submitted,

By 

Michael P. Furmanek

Registration No.: 58,495  
MARSHALL, GERSTEIN & BORUN LLP  
233 S. Wacker Drive, Suite 6300  
Sears Tower  
Chicago, Illinois 60606-6357  
(312) 474-6300  
Attorney for Appellant

**CLAIMS APPENDIX**

1. (Previously Presented) Conveyor line (1) for products (16) such as bottles, cans or similar containers, comprising:

at least one guide railing (6) which is adjustable across a direction of conveyance and is operable by at least one actuator drive (2), and

a plurality of movable stops (8a, 8b, 8c) that are optionally placeable at several preset positions (7, 7', 7'') in one or more adjustment pathways of the guide railing to delimit the at least one guide railing and define various railing positions.

2. (Previously Presented) Conveyor line according to Claim 1, wherein at least two stops (8a, 8b) are provided.

3. (Previously Presented) Conveyor line according to Claim 1, wherein the stops (8a, 8b, 8c) can be moved into the preset positions (7, 7', 7'') by one of manually, control means, or a combination thereof.

4. (Previously Presented) Conveyor line according to Claim 1, wherein the stops (8a, 8b, 8c) which are in preset positions (7, 7', 7'') can be moved into the adjustment pathway(s) by one of manually, control means, or a combination thereof.

5. (Previously Presented) Conveyor line according to Claim 1, and at least one opposing stop (11) which can be brought into contact (8) with the stops (8a, 8b, 8c) and follows the adjusting movement arranged on one of the guide railing (6) or the actuator drive (2).

6. (Previously Presented) Conveyor line according to Claim 5, wherein the opposing stop (11) has at least two stop faces (11a, 11b) facing away from one another as based on the adjustment pathway(s).

7. (Previously Presented) Conveyor line according to Claim 5, wherein the actuator drive (2) is a linear drive and the preset positions (7, 7', 7'') are assigned to the linear drive.

8. (Previously Presented) Conveyor line according to Claim 1, wherein the preset positions (7, 7', 7'') are designed in the form of recesses.

9. (Previously Presented) Conveyor line according to Claim 46, wherein the preset positions (7, 7', 7'') are designed in the form of multiple bores in the stop mount (A) set along the adjustment pathway(s) in the axial direction.

10. (Previously Presented) Conveyor line according to Claim 1, wherein the stops (8a, 8b) are designed as form-fitting plug or screw elements.

11. (Previously Presented) Conveyor line according to Claim 4, wherein the stops (8a, 8b, 8c) are designed as pneumatic cylinders that can be operated by control means.

12. (Previously Presented) Conveyor line according to Claim 46, wherein the stops (8a, 8b, 8c) can be screwed into threaded bores (7, 7', 7'') in the stop mount (A).

13. (Previously Presented) Conveyor line according to Claim 46, wherein the stop mount (A) has an axial bore (13) aligned with the cylinder body (9).

14. (Previously Presented) Conveyor line according to Claim 13, wherein the bore (13) is arranged coaxially with the piston rod (10) and the piston rod passes at least partially through the bore.

15. (Previously Presented) Conveyor line according to Claim 13, wherein the inside diameter (D) of the bore (13) is greater than the outside diameter (d) of the piston rod (10), thus forming an annular space (14).

16. (Previously Presented) Conveyor line according to Claim 15, wherein the bores (7, 7', 7'') for accommodating the stops (8a, 8b, 8c) are assigned to the annular space (14) so that the stops (8a, 8b, 8c) pass through the annular space (14) approximately at a right angle to the longitudinal extent of the annular space (14) when in an engaged or working position.

17. (Previously Presented) Conveyor line according to Claim 46, wherein the stop mount (A) has a centering shoulder (12) which engages in the cylinder body (9) in a form-fitting manner.

18. (Previously Presented) Conveyor line according to Claim 46, wherein the opposing stop (11) is attached to the piston rod (10) and is guided in the interior of the stop mount (A).

19. (Previously Presented) Conveyor line according to Claim 46, wherein the opposing stop (11) is displaceable with the piston rod (10) over the entire length of the adjustment path(s) in the stop mount (A).

20. (Previously Presented) Conveyor line according to Claim 1, wherein the adjustable guide railings (6) are arranged so they run opposite one another in pairs and parallel to the direction of conveyance with a distance between the pairs.

21. (Previously Presented) Conveyor line according to Claim 1, wherein the products (16) to be transported have a collar (17) by means of which they are transported suspended on two parallel sliding rails (15) which run with a distance therebetween.

22. (Previously Presented) Conveyor line according to Claim 21, wherein the sliding rails (15) are mounted in such a way that the products (16) are conveyed as suspended items beneath an air guide box (3).

23. (Previously Presented) Conveyor line according to Claim 21, and a nozzle channel (4) running in the direction of conveyance has blow nozzles aimed at the products (16) in the direction of conveyance.

24. (Canceled)

25. (Previously Presented) An actuator drive for actuating and positioning adjustable guide railings on conveyor lines for products such as bottles, cans or similar containers, the actuator drive comprising:

a stop body (A) defining one or more adjustment paths for the guide railings, and a plurality of preset positions (7, 7', 7''); and

a plurality of movable stops (8a, 8b, 8c) which can be arranged in the preset positions (7, 7', 7'') and can be moved into the one or more adjustment paths of the actuator drive (2) to delineate the one or more adjustment paths.

26. (Previously Presented) Actuator drive according to Claim 25, wherein at least two stops (8a, 8b) are provided.

27. (Previously Presented) Actuator drive according to Claim 25, wherein the stops (8a, 8b, 8c) can be moved into the preset positions (7, 7', 7'') by one of manual operation or controlled operation.

28. (Previously Presented) Actuator drive according to Claim 25, wherein the stops (8a, 8b, 8c) can be moved into the adjustment path(s) by one of manual operation or controlled actuation.

29. (Previously Presented) Actuator drive according to Claim 25, and at least one opposing stop (11) which can be brought into contact (8) with the stops (8a, 8b, 8c) and which follows the adjusting movement arranged in the adjustment path(s).

30. (Previously Presented) Actuator drive according to Claim 29, wherein the opposing stop (11) has at least two stop faces (11a, 11b) facing away from one another, as based on the adjustment path(s).

31. (Previously Presented) Actuator drive according to Claim 25, wherein the actuator drive is a linear drive formed as a double-acting pneumatic cylinder having a cylinder element (Z) which has a cylinder body (9) and a piston rod (10), and the preset positions (7, 7', 7'') are assigned to the pneumatic cylinder and comprise a stop mount (A) which is attached to the cylinder element (Z) in the axial direction.

32. (Previously Presented) Actuator drive according to Claim 25, wherein the preset positions (7, 7', 7'') are designed in the form of recesses into which the stops (8a, 8b, 8c) can be inserted in a form-fitting manner.

33. (Previously Presented) Actuator drive according to Claim 31, wherein the preset positions (7, 7', 7'') are designed in the form of multiple bores in the stop mount (A) offset in an axial direction.

34. (Previously Presented) Actuator drive according to Claim 25, wherein the stops (8a, 8b, 8c) are designed as one of form-fitting screw or plug elements.

35. (Previously Presented) Actuator drive according to Claim 25, wherein the stops (8c) are designed as pneumatic cylinders that can be operated by control means.

36. (Previously Presented) Actuator drive according to Claim 31, wherein the stops (8a, 8b, 8c) can be screwed into threaded bores (7, 7', 7'') in the stop mount (A).

37. (Previously Presented) Actuator drive according to Claim 31, wherein the stop mount (A) has an axial bore (13) aligned with the cylinder body (9).

38. (Previously Presented) Actuator drive according to Claim 37, wherein the axial bore (13) is arranged coaxially with the piston rod (10) and with the piston rod (10) passing through the axial bore (13) at least partially.

39. (Previously Presented) Actuator drive according to Claim 37, wherein the inside diameter (D) of the axial bore (13) is greater than the outside diameter (d) of the piston rod (10) and an annular space (14) is formed therebetween.

40. (Previously Presented) Actuator drive according to Claim 39, wherein the bores (7, 7', 7'') are assigned to the annular space (14) to accommodate the stops (8a, 8b, 8c) such that the stops (8a, 8b, 8c) pass through the annular space (14) approximately perpendicularly to the longitudinal extent thereof when in an engaged position or working position.

41. (Previously Presented) Actuator drive according to Claim 31, wherein the stop mount (A) has a centering shoulder (12) which engages in the cylinder head (9) in a form-fitting manner.

42. (Previously Presented) Actuator drive according to Claim 31, and an the opposing stop (11) which is attached to the piston rod (10) and is guided in the interior of the stop mount (A).

43. (Previously Presented) Actuator drive according to Claim 42, wherein the piston rod (10) is displaceable with the opposing stop (11) over the entire length of the stop mount (A).

44. (Previously Presented) Conveyor line according to Claim 1, wherein the guide railing (6) is operable so that it is adjustable in height by at least one actuator drive (2') longitudinally to the vertical axis of the products being conveyed, with stops (8a, 8b, 8c) which may optionally be arranged in the adjustment path (V) at multiple preset positions (7, 7', 7'') and delineate said path on the vertical adjustment path (V) of the guide railing (6) or the at least one actuator drive (2') and thereby define various railing positions.

45. (Previously Presented) Conveyor line according to Claim 7, wherein the linear drive is a double-acting pneumatic cylinder having a cylinder element (Z) which has a cylinder body (9) and a piston rod (10).

46. (Previously Presented) Conveyor line according to Claim 45, wherein the preset positions (7, 7', 7'') assigned to the linear drive comprises a stop mount (A) attached to the cylinder element (Z) of the pneumatic cylinder in the axial direction.

47. (Previously Presented) Conveyor line according to Claim 8, wherein the recesses comprise bores into which the stops (8', 8'', 8''') can be inserted in a form-fitting manner.

48. (Previously Presented) Conveyor line according to Claim 9, wherein the four of the multiple bores in the stop mount (A) comprises at least two rows with an arrangement of bores offset in the axial direction of the stop mount (A).

49. (Previously Presented) Conveyor line according to Claim 10, wherein the one of form-fitting plug or screw elements comprise pins.

50. (Previously Presented) Conveyor line according to Claim 21, wherein the products to be transported are bottles having a collar (17).

51. (Previously Presented) Conveyor line according to Claim 32, wherein the recesses are formed as bores.

52. (Previously Presented) Actuator drive according to Claim 33, wherein the form of multiple bores comprises at least two rows with an arrangement of bores that are offset in relation to one another in the axial direction of the stop mount (A).

53. (Previously Presented) Actuator drive according to Claim 34, wherein the stops are designed as pins.

54. (Previously Presented) Conveyor line according to Claim 1, wherein the actuator drive is a linear drive formed as a double-acting pneumatic cylinder having a cylinder element (Z) which has a cylinder body (9) and a piston rod (10) and where the preset positions (7, 7', 7'') are assigned to the linear drive and formed as a stop mount (A) attached to the cylinder element (Z) of the pneumatic cylinder in the axial direction.

**EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.